
Appeal Decision

Site visit made on 23 January 2024

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 19th February 2024

Appeal Ref: APP/A1720/W/23/3321682

Land south of 16 and 17 Glenthorne Close, Fareham, Hampshire PO14 2NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Enterprise Hangers Ltd against the decision of Fareham Borough Council.
 - The application Ref P/22/0337/OA, dated 2 March 2022, was refused by notice dated 10 November 2022.
 - The development proposed is an outline planning application for proposed erection of nine live/work [research/development/industrial/residential - Class E and C3] hangar buildings for aviation sector and public open space, with matters relating to access, layout and scale sought (appearance and landscaping reserved).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Enterprise Hangers Ltd against Fareham Borough Council. In addition, an application for costs was also made by Fareham Borough Council against Enterprise Hangers Ltd. These applications are the subject of separate Decisions.

Procedural matters

3. The application was submitted in outline with matters of landscaping and appearance reserved for future determination. The application includes details of one site access from Glenthorne Close. Any other access to, and access within, the site remain a reserved matter. Indicative drawings were submitted with the application showing the potential external appearance of the proposed units. I have had regard to these drawings in my determination of this appeal.
4. Prior to my determination of this appeal, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 which replaced the previous version. I have taken into account the relevant provisions of the revised version in the determination of the appeal and any references to the Framework in this decision relate to the revised document. In having regard to the matters that are most relevant to this appeal, there are no material changes to the Framework of relevance to the substance of this appeal. Therefore, I am satisfied that no party to this appeal would be prejudiced by the changes to the national policy context.

5. The Fareham Local Plan 2037, April 2023 (FLP) was adopted after the determination of the application by the Council. The FLP replaces the Fareham Local Development Framework Core Strategy 2011 and the Fareham Local Plan Part 2: Development Sites and Policies 2015 and therefore the policies quoted on the decision notice relating to the replaced plans are no longer relevant. The relevant changes to the local planning policy context are set out in the Council's Statement of Case which was available to the Appellant prior to the submission of final comments. In addition, the Council's Decision Notice also made reference to the policies of the emerging FLP. I have therefore determined the appeal on the basis of the policies contained within the FLP. I am satisfied that no party has been prejudiced in this regard.
6. The Council's reason for the refusal of planning permission number 9 refers to the loss of part of a secondary support site habitat and the lack of any mitigation. The appeal site was covered by a Solent Waders and Brent Goose site designation (F13) as a secondary support site. The Solent Waders and Brent Goose Strategy (SWBGS) aims to protect the network of non-designated terrestrial wader and brent goose sites that support the Solent Special Protection Area (SPA) from land take and recreational pressure associated with new development. However, on 8 December 2023 the Solent Waders & Brent Goose Steering Group advised that the appeal site had been removed from the F13 site designation. As such, I have not considered this matter further in my determination of this appeal.
7. The Council's reason for the refusal of planning permission number 10 refers to the fact that inadequate information has been submitted to conclude that the development would not have an adverse impact on protected species. However, as part of the appeal submission the Appellant has provided an update to the Preliminary Ecological Appraisal which followed a site walkover survey conducted in August 2023. This survey found no evidence of occupation by the relevant protected species on the site itself, with the site being used for foraging and commuting only. On the basis of the information provided in the updated Appraisal, the Council has confirmed in its Statement of Case that this reason for the refusal of planning permission has been addressed. Consequently, I have not considered this matter further in my determination of this appeal.
8. I am aware of the views of the Council, in its capacity as landowner and airport operator, that it does not support the proposal and considers that it would adversely affect the operation of the airport. However, I have determined this appeal on the basis of the planning merits of the proposal irrespective of the Council's landownership role.
9. At the time the planning application was determined the Council was unable to demonstrate a five year housing land supply. However, neither of the main parties have identified that the Council is still unable to demonstrate a five year housing land supply in respective statements of case following the adoption of the FLP. In these circumstances, I have no evidence to suggest that paragraph 11d of the Framework is engaged and consequently I have determined this appeal on the basis that the "tilted balance" does not apply.

Main Issues

10. The main issues are:

- The effect of the proposed development on the character and appearance of the surrounding area.
- Whether the proposal can be considered as employment led and the extent to which this would prejudice the delivery of the wider Swordfish Business Park.
- Whether the proposed development is appropriately located having regard to its position outside of the defined settlement boundary.
- Whether the proposed access position would prejudice the future delivery of the wider Swordfish Business Park.
- The effect of the likely traffic movements on the living conditions of the occupants of residential properties in the vicinity of the proposed access off Glenthorne Close with particular regard to noise and disturbance.
- The effect of the proposed development on the living conditions of the occupants of existing nearby residential properties and prospective occupants of the proposed units with particular regard to noise.
- The effect of the proposal on the existing and future operational potential of the airfield.
- Whether sufficient information has been provided to adequately demonstrate that the proposed development would have an acceptable level of flood risk.
- Whether the proposed development makes adequate provision for affordable housing.

Reasons

Character and appearance

11. The appeal site comprises a triangular parcel of relatively flat grassland located on the western side of Solent Airport and lying within the airport curtilage. Adjoining the western boundary are residential properties on Stubbington Lane and Ashton Way with properties on Glenthorne Close forming the northern site boundary. Access to the site would be provided from the existing turning head at the end of Glenthorne Close between the driveways of numbers 16 and 17.
12. The proposed development would involve the construction of nine two storey buildings of identical footprint and scale with the ground floor comprising a small aircraft hangar, office and workshop/store. The first floor would comprise a 3-bedroom apartment with a further office. The buildings would be positioned in a broad arc with hangar doors facing towards an airport taxiway. An access road would be provided to the rear of the buildings with a relatively large area of grassland remaining to the north-west which would be used as an amenity area. Although 'appearance' is reserved for future approval, illustrative plans show a relatively simple form of building with a barrel roof.
13. The land within, and around the edges of, the airfield is occupied by a variety of buildings of various construction ages, design, scale and mass such that the airfield itself has no distinct character. The Council contend that the proposal

would not respond to the character of the surrounding residential properties which comprises a variety of two storey, detached and semi-detached dwellings with predominantly gable roofs and of a 1960/70 design style. In particular, the Council argue that the illustrative drawings suggest a modern architectural theme which is alien to the surrounding area by virtue of the suggested curved roof form and the repetitive uniform arrangement of the buildings.

14. Notwithstanding the land use allocation of the appeal site which I consider below, it appears to be a long-established part of the airfield and provides a grassed buffer that visually separates the operational aspects of the airfield from the residential area. The proposal would retain a substantial amenity area that, in my view, would provide a clear distinguishing barrier between the character of the residential area and that of the proposed development which would be more visually associated with the airfield. I consider that the proposal would have a locational context that is intentionally more associated with the operational airfield than that of the nearby residential area.
15. Notwithstanding the employment issues which are considered later in this decision, the use of the proposed development is clearly associated with aviation which is reflected in the scale and mass of the proposed buildings, their orientation and the indicative architectural design. In my view, it would be inappropriate to consider the layout and design of the proposed buildings within the context of the nearby residential area as their function and purpose is more associated with that of the airfield with the retention of part of the grassed buffer between the two distinct areas.
16. The indicative design of the proposed buildings would be broadly commensurate with an architectural style that would be expected to be seen within an airfield context. In my view, they would form part of the varied character of predominantly aviation led development that already exists around the edge of the airfield.
17. Taking the above factors into account, I do not consider that the proposed development would be demonstrably harmful to the character and appearance of the surrounding area. Consequently, there would be no conflict with Policy D1 of the FLP. This policy, amongst other things, requires development proposals to appropriately respond to the positive elements of local character.

Whether employment led

18. The FLP shows the appeal site as forming one of three joined triangular parcels of land forming the proposed 20ha Swordfish Business Park which is allocated for employment uses. The appeal site comprises the south-western triangular land parcel and forms part of a wider employment opportunity area known as Daedalus. Although, not adopted as planning policy, the Council published a Vision Document for Daedalus which identified that this would comprise an aviation cluster of medium-large sized hangarage for commercial aviation business to locate and a commercial business development park attracting target-sector based business.
19. Policy E3 of the FLP identifies that the Swordfish Business Park is an extension and intensification of the strategic employment allocation within the former Fareham Local Plan Part 1 (2011). Development, in addition to that permitted by an outline planning permission, is required to contribute towards the delivery of 12,800 sq.m of employment floorspace and ancillary uses, in line

with the Daedalus Vision, including Research and Development, convenience, childcare and education and training of pilots (in addition to the 22,000 sq.m already permitted). It further states that the primary vehicular access shall be obtained from Gosport Road.

20. Although development of the Swordfish Business Park has not yet commenced, the Council indicates that there is a reserved matters approval in place for the infrastructure works including an access road to Gosport Road.
21. It is submitted by the Appellant that the units would provide an approximate floorspace split of 60% commercial/employment and 40% residential. The Appellant indicates that the proposal has the potential to create 30 jobs based on a number of parties showing interest in the proposal and estimating a range of jobs for each unit.
22. However, I recognise that a significant part of the employment space would be taken up by the aircraft hangar which would limit the available floorspace available for employment use. Furthermore, the fact that a number of nearby companies may have shown interest in the scheme does not suggest any firm commitment to relocate their business to any of the proposed units. Although the Appellant has suggested that a planning condition could be imposed requiring that each unit is used for aviation-led employment, I recognise the Council's concern that it will be a matter for the individual residents to determine the level of employment opportunity in each unit.
23. Whilst the Appellant has provided some evidence of employment densities of units around the airport, the Council suggest that this only considers units with an airside access. It fails to adequately consider vacant units and other businesses which may have aviation related elements but do not require airside access. I also note the comments of the Council's Economic Development team that although the proposal has the potential to provide some employment, this would be small scale relative to the wider Swordfish Business Park allocation and it would take valuable land which could otherwise provide more significant levels of specialist employment.
24. Taking the above factors into account, I consider that the suggested 30 jobs is a speculative number and I have no technical evidence of any economic impact appraisal to conclude otherwise or to demonstrate how the proposals would contribute to the objectives of Policy E3 of the FLP. In addition, a considerable amount of employment floorspace would be taken up by the aircraft hangar which limits its use and availability.
25. In my view, the primary intention of those persons wishing to occupy the proposed units would be that of residential accommodation with hangar space and a potential to accommodate some level of employment opportunity if desired. In this regard, I do not consider that it can be reasonably considered that the proposed development would be employment led within the context of the Council's objectives for this strategic employment allocation.
26. I have also taken into account the fact that the proposed units would comprise live/work units. Whilst I note the local and national support for live/work units, I concur with the Council's interpretation of paragraph 6.4 of the FLP that the flexibility for the potential for live/work units would be better applied to a residential led scheme whereby housing can be adaptive to allow for additional home working or for the operation of a genuine small business. Furthermore, I

share the Council's view that the driver behind the paragraph is to encourage economic development across the Borough that falls outside traditional practices and locations such as business parks.

27. In this case, the proposed units would occupy a strategic employment site where Policy E3 of the FLP clearly articulates the Council's objectives in employment floorspace delivery. In my view, the primary purpose of the proposal is not for employment generating uses, as a considerable part of the floorspace of each unit would comprise residential accommodation and hangar space. Furthermore, I consider that the suggested job outcomes are speculative and unclear.
28. Against the above background, I consider that the proposal would take valuable land which could otherwise provide more significant levels of specialist employment. It has not been adequately demonstrated that the proposal would constitute development that would accord with the provisions of Policy E3 of the FLP.

Whether appropriately located

29. The Council suggest that the appeal site lies outside the defined urban settlement boundary, although I have no evidence before me to suggest that this remains the case following the adoption of the FLP. Amongst other things, Policy HP2 of the FLP identifies that new small-scale housing development (of not more than four units) will be permitted where the site is within or adjacent to existing areas of housing or is well related to the settlement boundary and the site is within reasonable walking distance to a good bus service route or a train station. The development must also be of an appropriate design that does not affect the predominant development form of the area.
30. I have found above that the indicative drawings show that the proposed development would be of an acceptable design form. It would be located adjacent to existing areas of housing. Furthermore, I have no contrary evidence to suggest that the appeal site is otherwise well connected to public transport and local services. In this context, I find that the appeal site is sustainably located.
31. Whilst there would be some conflict with the quantum of development prescribed in Policy HP2, I am mindful that the proposal does not comprise of solely residential development. Notwithstanding my findings above regarding the extent to which the proposal may be considered employment led, the development would introduce live work units on an allocated employment site close to existing housing where 40% of each unit floorspace would be residential. Policy HP2 does not explicitly consider such type of hybrid development and its appropriateness, or otherwise, to be located on an allocated employment site.
32. Other than quantum, the proposal would not materially conflict with the other relevant provisions Policy HP2. Furthermore, Policy HP2 does not specifically cater for hybrid proposals such as the appeal scheme on an employment allocation. Therefore, given the nature of the proposed development, any possible conflict with the provisions of the policy would not be of an extent that would support the dismissal of this appeal on the grounds of material conflict with the provisions of Policy HP2 when taken as a whole.

Effect of access on the delivery of the Swordfish Business Park

33. The Council suggests that as the proposed access is not taken from Gosport Road and, taking into account the alleged isolated nature of the appeal site, it would prejudice the delivery of the wider Swordfish Business Park. However, as indicated above, the appeal site comprises a triangular land parcel located on the south-western edge of the proposed allocation. In these circumstances, the remaining two triangular land parcels to the north east could continue to be accessed from Gosport Road.
34. Policy E3 of the FLP is quite specific in stating that the “primary” vehicular access to the Swordfish Business Park shall be obtained from Gosport Road. The relevant policy wording does not suggest that access shall only be taken from Gosport Road, nor does it preclude any “secondary” means of access taken from elsewhere.
35. I have no technical evidence to indicate how the proposed access to the appeal site would prejudice the delivery of the wider Business Park. Furthermore, my attention has not been drawn to any technical impediment that may prevent the construction of internal roads that may enable the appeal site to be linked to the other two triangular land parcels, particularly as such access roads would remain a reserved matter.
36. In the absence of any other compelling technical evidence to the contrary, I have no basis to conclude that the proposed access arrangements to the appeal site would prejudice the delivery of the wider Swordfish Business Park. In this regard, I find the Council’s concerns to be unsubstantiated. Consequently, there would be no conflict with criterion ‘b’ of Policy E3 of the FLP.

Living conditions – Traffic Movements

37. The submitted Transport Statement indicates that the proposal would generate 236 daily two-way vehicle movements. This would include 23 two-way movements in the AM peak hour and 19 two-way movements in the PM peak hour. Hampshire County Council, in its capacity as highway authority, raised no objections to the proposals on highway or pedestrian safety grounds and I have no evidence to suggest that the local highway network is incapable of accommodating the likely level of traffic that would be generated.
38. I observed at my site visit that Glenthorne Close comprises a partially meandering residential road that currently experiences a relatively low-level of vehicular movements which predominantly comprises resident and domestic type traffic. This contributes to a quiet residential street character, particularly in the vicinity of the cul-de-sac turning head.
39. In my view, the additional daily vehicular movements associated with the proposed development would introduce a level of noise and disturbance for the occupants of properties along the Close that would unacceptably harm their living conditions. This would be particularly the case for the occupants of properties in the vicinity of the cul-de-sac turning head who currently experience no through traffic. The proposal would result in an unacceptable change to the quiet character of this part of the Close to one that is more intensely trafficked with such movements occurring in close proximity to the facade of the properties in the vicinity of the turning head.

40. The submitted Transport Statement, perhaps understandably, does not consider in any detail the effect of the proposed traffic on the living conditions of nearby residents. Although the Appellant has identified that the trip generation will likely be an overestimate, I have no other evidence before me that considers in any detail the Council's concerns in respect of the effect of traffic movements on the living conditions of nearby residents.
41. For the above reasons, I find that the daily vehicular movements associated with the proposed development would have a detrimental effect on the living conditions of nearby residents on Glenthorne Close as a consequence of noise and disturbance. The proposal would therefore be contrary to Policy D2 of the FLP. This policy, amongst other things, requires that development proposals should not have an unacceptable adverse impact on the environmental conditions of adjacent/nearby occupants.

Living conditions - Noise

42. Although the Appellant has provided a Noise Report, this does not comprise a technical report prepared by a suitably qualified person experienced in the measurement and prediction of noise levels nor does it provide a technical basis for the consideration of any mitigation measures.
43. I have had regard to the advice provided in paragraphs 180e and 191a of the Framework and the Planning Practice Guidance¹ (PPG). In summary, these advise that noise needs to be considered when development may create additional noise, or would be sensitive to the prevailing acoustic environment. In addition, planning decisions should prevent new and existing development from contributing to, or being put at unacceptable risk from, noise pollution and should ensure that new development is appropriate for its location taking into account the likely effects on living conditions.
44. I accept that the installation of acoustic glazing and insulation could minimise the effect of unacceptable external noise from being experienced from within the proposed buildings. However, in order to determine the appropriate design and specification of any such acoustic attenuation, both to the buildings and externally, a survey of the existing noise climate and calculations of noise levels arising from noise generating activities would be necessary. Furthermore, as the hangar doors are likely to remain open to enable access and egress for aircraft, some operating procedures to mitigate noise may be necessary that are informed by an appropriate technical assessment.
45. The Appellant has suggested that such technical assessment could be provided if expressly requested by the Inspector. However, it is not a matter for the Inspector to request technical information that could have been either submitted with the planning application or where the Council's decision makes it clear that technical information would be necessary to support a case against a reason for the refusal of planning permission.
46. In this case, the Council's twelfth reason for the refusal of planning permission, which was based on the Supplementary Report to the Council's Planning Committee, makes it clear that inadequate information had been submitted to make any conclusion on whether the development would have a significant adverse impact by virtue of noise affecting existing and proposed residents.

¹ Paragraph: 001 Reference ID: 30-001-20190722

Therefore, the Appellant was aware that further technical noise information should have been submitted with the appeal to address this matter.

47. The Procedural Guide² makes it clear that information or evidence should only be accepted where it is evident that it would not have been possible to submit it within the prescribed time limits set out in the appeal timetable. It further advises the appeal process should not be used to evolve a scheme. Consequently, I have considered the appeal on the basis of the evidence submitted by the parties within the prescribed timetable. In my view, there was opportunity within the appeal timetable for the Appellant to provide a competent assessment to seek to address the Council's concerns.
48. I recognise that existing residents in the vicinity of the airport experience a degree of noise associated with aircraft manoeuvring, take-off and landing. The proposed development would introduce residential receptors in closer proximity to the operational areas of the airport than the occupiers of residential properties in the immediate vicinity. Furthermore, the proposal itself would introduce aircraft movements in closer proximity to existing residential properties and relatively close to the proposed amenity area and the residential spaces between the proposed buildings.
49. I have no evidence to indicate the likely noise levels that would be experienced by existing and proposed occupants or the users of the amenity spaces. Furthermore, I have no details of any mitigation measures that may be necessary to demonstrate that noise levels can be maintained within acceptable limits.
50. I consider that insufficient evidence has been provided in this appeal to make any reasonable conclusion regarding the impact of noise on the living conditions of existing and proposed residents. The proposal would therefore be contrary to Policy D2 of the FLP. This policy, amongst other things, requires that development proposals should not have an unacceptable adverse impact on the environmental conditions of future occupiers and users or on adjacent/nearby occupants.

Effect on the operational potential of the airfield

51. The planning application was accompanied by a "Safety and Security on Solent Aeropark" document which sets out various security measures that would be employed. In addition, the document identifies that the Civil Aviation Authority (CAA) Aerodrome Inspector is of the view that "Based on the diagrams, the design and proposed operation as presented complies with the aerodrome regulatory requirements and should not have any operational impacts" in terms of airport safety.
52. I have not been provided with the context of the consultations that the Appellant undertook with the CAA or the supplied information on which they were asked to comment. The CAA's response to the Council's consultation on the planning application does not specifically identify that the CAA has no safety objections to the proposals but does raise a number of matters that require consideration.
53. The airport is operated by Regional and City Airports Ltd (RCA) under contract to, and on behalf of, the airport owner and holds the CAA Licence. RCA are

² Procedural Guide: Planning appeals – England (Updated 11 January 2024)

obliged to maintain compliance with the CAA Licence. The Airport Manager, who is the Accountable Manager for the CAA Licence on behalf of RCA, has identified that the risks presented by the proposal cannot be fully managed and has raised a number of concerns. He concludes that there is no satisfactory evidence to demonstrate that the risks can be mitigated to an acceptable level.

54. I have taken into account the views of the General Aviation Council and the Aircraft Owner and Pilots Association. Whilst these views are generally supportive of the principle of the proposal, they do not specifically address in any detail the concerns expressed by the Airport Manager. Moreover, these organisations are not the relevant responsible bodies for the safety of the Solent Airport. Consequently, I have attached little weight to the views expressed.
55. The CAA does not provide a response that clearly and compellingly demonstrates its support or objection to the proposed development. Furthermore, I have no demonstrable and detailed evidence that addresses the concerns of the Airport Manager. Therefore, in these circumstances, I have attached considerable weight to the views of the Airport Manager in the capacity as Accountable Manager for the CAA Licence.
56. On the basis of the evidence before me, I conclude that the proposed development would likely introduce safety and security risks that would conflict with the operation of the Airport and, in this respect, it would be contrary to Policy E3 of the FLP.

Flood Risk

57. The submitted Drainage Strategy identifies the appeal site as lying within Flood Zone 1 (low probability of flooding) and I have no evidence to suggest that appeal site has a critical drainage problem (as notified to the local planning authority by the Environment Agency). It further identifies that it has been prepared on the basis of a desk top assessment and no site visit has been made. It states that the principle of the proposed drainage strategies will require to be confirmed or modified at detailed design stage.
58. The Drainage Strategy proposes two different drainage strategies. The first is drainage by infiltration and the second is on site attenuation with a discharge to surface water sewer. The Drainage Strategy identifies that the intention is to mimic the existing surface water run-off regime and as such there would be no adverse impact on flood flow rates outside the site. I have no contrary evidence to suggest that the proposed development does not meet the Sequential Test or that the application of the Exceptions Test is required.
59. The Drainage Strategy recognises that geotechnical investigation would be necessary to prove that there is adequate ground permeability, which has not been undertaken, if infiltration is to be used. The Council contend that without such infiltration testing and winter ground monitoring then it cannot be concluded that infiltration is a potential means of managing the surface water arising from the appeal site. In addition, the alternative strategy of attenuation with subsequent discharge to a surface water sewer would require confirmation from the relevant water company that there is sufficient capacity in the local surface water drainage system to accommodate the proposed flows arising from the development.

60. Although no detailed drainage layouts are provided for either strategy, the Appellant has submitted a letter from Southern Water, dated 15 September 2023. This identifies that there is currently adequate capacity in the local sewerage network to accommodate foul drainage but no surface water flows (existing or proposed) can be accommodated within the existing foul sewerage system unless agreed by the Lead Local Flood Authority in consultation with Southern Water. I have no evidence to indicate whether any subsequent discussions have occurred with the Lead Local Flood Authority which, in any event, may likely require foul sewage system capacity surveys.
61. I have taken into account the Appellant's view that the details of the surface water drainage system could be made the subject of an appropriately worded "Grampian" planning condition. However, in this case, I consider that the Drainage Strategy comprises a desk top study only, lacking detailed survey information. Consequently, there are inherent uncertainties and a lack of conclusive evidence to provide any reasonable reassurance that either of the proposed drainage strategies are capable of implementation.
62. I recognise that the flood risk may be considered low. However, against the above background and taking into account the advice in the Framework, I have no compelling evidence that conclusively demonstrates that the surface water arising from the proposed development can be adequately managed in either of the drainage strategies proposed.
63. In such circumstances, I do not consider that the use of a "Grampian" planning condition would be appropriate. Consequently, the proposed development would be contrary to Policy CC2 of the FLP. This policy, amongst other things, requires that development will be safe over its lifetime, taking into account the increased risk of flooding due to climate change, and without increasing flood risk elsewhere and that onsite surface water run-off is managed as close to the source as possible.

Affordable Housing

64. The Council suggest that common ground has been reached with the Appellant regarding the level of contribution to be secured towards off-site affordable housing. The Appellant has provided a Deed of Undertaking dated 5 May 2023 which suggests that it creates planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990 (the 1990 Act). The definition of "contribution" includes an off-site affordable housing contribution of £534,634 payable by the Appellant to the Council, although I have no conclusive evidence to confirm, or otherwise, that this constitutes the agreed level of contribution.
65. The Council has expressed concern that the Deed of Undertaking cannot constitute a planning obligation pursuant to Section 106 of the 1990 Act as the Appellant has no interest in the land. As such, it would need to be considered as a contractual agreement between the Appellant's company and the Council that would be potentially enforceable under section 111 of the Local Government Act 1972. Those statutory powers are not referenced in the document.
66. In addition, the Council contends that the Deed of Undertaking has no obligations in it. The "Schedule" section is blank and it does not provide any obligations to pay any contributions or set out any relevant date or trigger

when these need to be paid. There are no covenants in the document to confirm that the Appellant's company covenant to comply with the obligations in the schedule, if indeed there were any.

67. Having considered the submitted Deed of Undertaking, I share the Council's concerns. In my view, the submitted Deed of Undertaking is incomplete and flawed. In such circumstances, I have not attached any weight to this document in my consideration of this appeal.
68. I have considered the Appellant's view that if the Deed of Undertaking is not acceptable then a "Grampian" planning condition could be used to secure the necessary contribution. However, the Planning Practice Guidance (PPG)³ on the use of planning conditions is quite clear that no payment of money or other consideration can be positively required when granting planning permission. It further advises that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation and a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases.
69. Taking into account the advice in the PPG, in this case I do not consider that there are any exceptional circumstances whereby a negatively worded condition requiring that a planning obligation (or other agreement) be entered into before development commences would be appropriate. This is particularly the case in circumstances where the use of section 111 of the Local Government Act 1972 is also likely to require the express agreement of the Council. Accordingly, the proposed development does not make adequate provision for a contribution to be made to affordable housing.
70. The Council's Decision Notice states that the proposal would be contrary to Policy HP2 of the (then) emerging FLP. However, in the adopted FLP this policy relates to "Small Scale Residential Development Outside Urban Areas" and does not reference any affordable housing contribution. The Officer Report to Planning Committee, in relation to affordable housing, identifies that Policy HP5 of the (then) emerging FLP, is the relevant policy. This policy, amongst other things, identifies that sites that can accommodate 10 or more dwellings or sites with an area of 0.5 hectares or more shall provide, in the case of greenfield sites, 40% of dwellings as affordable housing and that the Council will only accept affordable housing provision off site or an appropriate financial contribution in lieu where it is robustly justified.
71. Notwithstanding, the discrepancy in the Decision Notice, it seems to me that the Officer Report was quite clear in setting out which policy of the emerging FLP that the proposal would be in conflict with. For the above reasons, the proposed development does not make adequate provision for a contribution to the delivery of off-site affordable housing and is therefore contrary to Policy HP5 of the FLP.

Other matters

72. I acknowledge that this proposal is in proximity to the Solent and Southampton water Special Protection Area (SPA) and Ramsar site, which could result in potential adverse effects upon the European protected sites due to increase in

³ Planning Practice Guidance Paragraph 005: ID 21a-005-20190723 and Paragraph 010: ID 21a-010-20190723

recreational disturbance associated with an increase in the local residential population/visitor numbers. Furthermore, increased levels of nitrates entering the SPA and Ramsar site from sewage discharge and wastewater generated from the proposal could result in potential adverse effects upon the European protected sites.

73. Had I been minded to allow this appeal, I would have sought a screening direction from the Secretary of State in accordance with Regulation 14(2) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
74. I may have also needed to engage with the requirements of The Conservation of Habitats and Species Regulations 2017 to consider the likely significant effects of the proposal on European protected sites (individually and in combination with other plans and projects) and whether it was necessary to undertake an Appropriate Assessment (AA).
75. The Deed of Undertaking suggests that contributions will be made to the New Forest and that 12.3 Nitrate Credits will be purchased from an approved provider. However, for the reasons identified in relation to the affordable housing contribution, the Deed of Undertaking is flawed and does not provide an enforceable mechanism to secure any such purchasers or payments nor does it provide any detail of what the mitigation schemes may be. Moreover, for the reasons all given above, I do not consider that such matters can be made the subject of a Grampian planning condition.
76. However, Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. Given my conclusions on the main issues above and the planning balance, it is not necessary for me to consider this matter in any further detail.
77. The Council has also drawn my attention to a recent appeal decision for six mixed use hangar buildings on land in a different part of the Solent Airfield which involved units having a 60% residential and 40% commercial split (Ref: APP/J1725/W/20/3250189). In dismissing the appeal, my colleague Inspector found that whilst the proposal could generate around 18 jobs full time employees, given the level of employment that would actually be delivered, he did not consider that the proposal amounted to an employment led development. There are material differences in the planning circumstances between the appeal considered by my colleague Inspector and that before me, not least those that relate to the floorspace split. Consequently, I have determined the appeal scheme on its own individual planning merits.
78. In addition to the main issues that I have identified above, I have also taken into account the representations made in support and objection to the proposed development from local residents and interested parties at both the planning application stage and in response to the appeal. Whilst these matters have been carefully noted, they do not alter the main issues which have been identified as the basis for the determination of this appeal.

Planning Balance

79. I have found that the proposed development would not have a harmful impact on the character and appearance of the surroundings. Furthermore, the

proposed access arrangements would not demonstrably compromise the delivery of the wider Swordfish Business Park nor would there be a demonstrable and sustainable conflict with the provisions of Policy HP2 of the FLP in respect of whether the appeal site may be located outside of the defined urban settlement boundary.

80. However, the proposal would not accord with the employment objectives of Policy E3 of the FLP and would take up valuable land allocated for strategic employment development with uncertainty of the economic benefits and job creating potential of the proposed development. In addition, I have found that the daily vehicular movements associated with the proposed development would likely have a detrimental effect on the living conditions of nearby residents on Glenthorne Close as a consequence of noise and disturbance. Furthermore, insufficient evidence has been provided in this appeal to make any reasonable conclusion regarding the impact of noise on the living conditions of existing and proposed residents.
81. It has not been adequately demonstrated that the proposed development would not introduce safety and security risks. As such, it has the potential to conflict with the operation of the Airport. Furthermore, it has not been adequately demonstrated that the proposed drainage strategies can be implemented to the extent that it can be conclusively demonstrated that there would be no risk of flooding. The proposed Deed of Undertaking is flawed and does not provide adequate arrangements for a contribution to be made to the delivery of affordable housing.
82. I accept that there are some matters in this appeal where further technical information could have been provided to demonstrate, or otherwise, compliance with the relevant policies of the development plan. However, I am obliged to determine the appeal on the basis of the evidence provided.
83. In considering the planning balance, I conclude that the significant and unacceptable adverse impacts of granting planning permission upon the delivery of the Swordfish Business Park, potential noise and disturbance for existing and proposed residents, the effect on flood risk and the lack of any provision for a financial contribution towards the delivery of affordable housing would significantly and demonstrably outweigh the benefits, when assessed against the policies in the development plan and the Framework taken as a whole.

Conclusion

84. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR